
UTAH LABOR COMMISSION

PATRICIA L. BEDEL,

Petitioner,

vs.

**REST EASY ADULT DAY
CARE and WORKERS
COMPENSATION FUND,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 05-0502

Patricia L. Bedel asks the Utah Labor Commission to review Administrative Law Judge Lima's dismissal of Ms. Bedel's claim against Rest Easy Adult Day Care and its insurance carrier, Workers Compensation Fund, (referred to jointly as "Rest Easy") for permanent total disability compensation under §34A-2-413 of the Utah Workers' Compensation Act.

The Labor Commission exercises jurisdiction over this motion for review pursuant to § 34A-2-801(3) of the Utah Workers' Compensation Act and § 63G-4-301 of the Utah Administrative Procedures Act.

BACKGROUND AND ISSUE PRESENTED

Ms. Bedel claims permanent total disability compensation for a spinal injury suffered while working for Rest Easy on August 10, 2004. At the evidentiary hearing on Ms. Bedel's claim, the parties stipulated to the facts regarding Ms. Bedel's work injury and her return to light-duty, part-time work after the injury. Based on those stipulated facts, Judge Lima concluded that Ms. Bedel was "gainfully employed" within the meaning of subsection 413(1) (c) (i) of the Utah Workers' Compensation Act and, therefore, was not entitled to permanent total disability compensation.

In asking for Commission review of Judge Lima's decision, Ms. Bedel argues that her post-injury work does not constitute "gainful employment" within the meaning of subsection 413(1) (c) (i) and should not disqualify her from receiving permanent total disability compensation.

FINDINGS OF FACT

As already noted, the parties stipulated to the material facts of Ms. Bedel's injury and subsequent return to work, as follows:

1. Petitioner suffered an industrial accident on August 10, 2004, at Rest Easy Adult Day Care.

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2. Petitioner's hourly wage was \$8.50 and she worked weekly between 40 to 55 hours when employed at Rest Easy Adult Day Care.
3. On or about November 1, 2004, Petitioner was self-employed as a companion for an elderly woman. Petitioner's wage is \$9.00 an hour and she works four hours daily, five days weekly.

DISCUSSION AND CONCLUSION OF LAW

There is no dispute that Ms. Bedel's work-related back injury is compensable under Utah's workers' compensation system. The only issue in dispute is whether Ms. Bedel is entitled to permanent total disability compensation for that injury. Subsections 43A-2-413(1) (b) and (c) establishes several tests that an injured worker must satisfy in order to qualify for permanent total disability compensation. The focus in this case is on subsection 413 (1) (c) (i), which requires that an injured worker establish he or she is not "gainfully employed."

The Commission does not interpret the term "gainful employment" as used in subsection 413 (1) (c) (i) as including **any** paid work, no matter how limited, poorly paid, or uncertain. To consider such tenuous work as "gainful employment," so as to cut off the injured worker's ability to claim permanent total disability compensation, would be inconsistent with other provisions of § 413 and contrary to the objectives of the Act. But on the other hand, the term "gainful employment" has been placed in the statute for a purpose—it cannot be applied so narrowly as to render it meaningless. With these considerations in mind, the Commission turns to the application of subsection 413 (1) (c) (i)'s "gainful employment" test to the circumstances of Ms. Bedel's claim.

Ms. Bedel's work accident has left her with a 4% whole person impairment that limited her mobility and strength. However, Ms. Bedel found other work relatively quickly that is compatible with her limitations. This new employment involves a substantial number of hours of work each week at a wage rate that is higher than her the wage she had earned at Rest Easy before her injury. The record does not indicate that Ms. Bedel's new work is short term or tenuous, nor does it appear that Ms. Bedel's limitations prevent her from accepting additional hours of work. Under these circumstances, and in light of the very limited evidence that has been submitted on this issue, the Commission concurs with Judge Lima's determination that Ms. Bedel is gainfully employed within the meaning of subsection 413(1)(c)(i) of the Act and therefore fails to qualify for permanent total disability compensation.

As a final matter, the Commission notes Ms. Bedel's suggestion that, even if she does not meet § 413's requirements for permanent total disability compensation, the Commission should nevertheless concluded that she is entitled to permanent total disability compensation under the "odd lot" doctrine. Under the "odd lot" doctrine:

[a]n employee who is so injured that he or she can perform no services other than

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those which are so limited in quality, dependability, or quantity that a reasonable stable market for them does not exist, may well be classified as totally disabled.

(*Larson's Workers' Compensation Law*, "Odd Lot Doctrine," Vol. 4, § 83.01; quoting *Lee v. Minneapolis St. Ry.*, 41 N.W. 2d 433, 436 (Minn. 1950).)

The Commission notes that the limited evidence submitted in this case is insufficient to satisfy the requirements of the "odd lot" doctrine. But more importantly, the Utah Legislature's enactment of § 413 of the Workers' Compensation Act has established the specific elements that determine whether an injured worker is entitled to permanent total disability compensation. And as already noted, Ms. Bedel has not satisfied the statutory requirement of subsection 413(1) (c) (i) by showing she is not gainfully employed.

ORDER

The Commission affirms Judge Lima's dismissal of Ms. Bedel's claim for permanent total disability compensation. It is so ordered.

Dated this 24th day of February, 2008.

Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.